



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 7, 1993

Honorable Merrill L. Hartman
Chair
Court Reporters Certification Board
P.O. Box 13131
Austin, Texas 78711-3131

Letter Opinion No. 93-110

Re: Whether newly added subsections (e) and
(f) of section 52.021 of the Government Code
conflict and related questions (ID# 22365)

Dear Judge Hartman:

On behalf of the Court Reporters Certification Board (the "board"), you ask several questions about section 52.021 of the Government Code as recently amended by House Bill 2073, Acts 1993, 73d Leg., ch. 1037, § 2 (eff. Sept. 1, 1993). Chapter 52 of the Government Code governs the certification of shorthand reporters. It defines the terms "shorthand reporter" and "court reporter" to mean "a person who engages in shorthand reporting." Gov't Code § 52.001(4), *as amended by Acts 1993, 73d Leg., ch. 1037, § 1*. It defines the terms "shorthand reporting" and "court reporting" as follows:

the practice of shorthand reporting for use in litigation in the courts of this state by making a verbatim record of an oral court proceeding, deposition, or proceeding before a grand jury, referee or court commissioner using written symbols in shorthand, machine shorthand, or oral stenography.

Gov't Code § 52.001(5), *as amended by Acts 1993, 73d Leg., ch. 1037, § 1*.

Subsection (b) of section 52.021 provides that a person may not engage in shorthand reporting in this state unless the person is certified as a shorthand reporter by the supreme court. Gov't Code § 52.021(b). Subsection (c) of section 52.021 provides that a certification issued under chapter 52 of the Government Code must be for one or more methods of shorthand reporting, namely written shorthand, machine shorthand, oral stenography, or "any other method of shorthand reporting authorized by the supreme court." Gov't Code § 52.021(c).

The legislature recently amended section 52.021 by adding the following subsections:

(e) A person may not assume or use the title or designation "court recorder," "court reporter," or "shorthand reporter," or any abbreviation, title, designation, words, letters, sign, card, or device tending to indicate that the person is a court reporter or shorthand

reporter, unless the person is certified as a shorthand reporter by the supreme court. Nothing in this subsection shall be construed to either sanction or prohibit the use of electronic court recording equipment operated by a noncertified court reporter pursuant and according to rules adopted or approved by the supreme court.

(f) Except as provided by Section 52.031 and by Section 20.001, Civil Practice and Remedies Code, all depositions conducted in this state must be recorded by a certified shorthand reporter.

(g) The board may enforce this section by seeking an injunction or by filing a complaint against a person who is not certified by the supreme court in the district court of the county in which that person resides. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The board shall be represented by the attorney general and/or the county or district attorney of this state, or counsel designated and empowered by the board.

Acts 1993, 73d Leg., ch. 1037, § 2. Section 20.001 of the Civil Practice and Remedies Code, referred to in subsection (f), provides for the taking of depositions upon written questions by certain persons. *See* Civ. Prac. Rem. Code § 20.001(a), *as amended by* Acts 1993, 73d Leg., ch. 1037, § 4. Section 52.031(b) of the Government Code provides for the reporting of a deposition upon oral examination by a noncertified shorthand reporter if a certified shorthand reporter is not available. Except as provided by section 52.031, a person who engages in shorthand reporting in violation of section 52.021 commits an offense punishable as a Class A misdemeanor. Gov't Code § 52.032(a), *as amended by* Acts 1993, 73d Leg., ch. 1037, § 3.

First, you ask whether newly enacted subsections (e) and (f) of section 52.021 of the Government Code conflict. We do not believe that they do. We understand that the Supreme Court of Texas has approved local rules promulgated by courts of various counties which permit electronic recording of court proceedings. *See* Gov't Code § 74.024(a) (authorizing the supreme court to "adopt rules of administration setting policies and guidelines necessary or desirable for the operation and management of the court system and the efficient administration of justice"); TEX. R. CIV. P. 3a (any proposed local rule shall not become effective until it is approved by the supreme court). The intent of the last sentence of subsection (e) appears to be to ensure that the prohibition in the first sentence of the subsection has no effect on those local rules. Subsection (f), on the other hand, requires that all depositions conducted in the state must be recorded by a certified shorthand reporter, with certain exceptions not relevant here. It is clear from the amendments to section 20.001(a) of the Civil Practice and Remedies Code which were also enacted in House Bill 2073, that subsection (f) refers to depositions

upon oral examination as opposed to depositions upon written questions.¹ Given that the two provisions deal with entirely different contexts, court proceedings in the case of the last sentence of subsection (e) and depositions upon oral examination in the case of subsection (f), we do not believe that they conflict.²

Next you ask whether a certified shorthand reporter who records a deposition using a tape recorder as the primary or only method is in violation of chapter 52 of the Government Code. We assume you are referring to a deposition upon oral examination. Subsection (b) of section 52.021 provides that a person may not engage in shorthand reporting in this state unless the person is certified as a shorthand reporter by the supreme court. Furthermore, a certified shorthand reporter may be disciplined for "engaging in the practice of shorthand reporting using a method for which the reporter is not certified." Gov't Code § 52.029(a)(7). You appear to be concerned that a certified shorthand reporter who records such a deposition using a tape recorder would run afoul of these provisions.

Your concern assumes that using a tape recorder to record such a deposition constitutes "shorthand reporting." The definition of "shorthand reporting," however, refers to making a verbatim record "using written symbols in shorthand, machine shorthand, or oral stenography." *Id.* § 52.001(5). It does not refer to making a verbatim record with a tape recorder or any other electronic recording equipment. *Id.* Nor has the Texas Supreme Court adopted rules authorizing electronic recording as a shorthand reporting method. See Texas Supreme Court Standards and Rules for Certification of Certified Shorthand Reporters pt. I(C) (unpublished, on file with the Court Reporters Certification Board). Given the limited scope of the definition of the term "shorthand reporting," we do not believe that a person who uses a tape recorder to record such a deposition engages in "shorthand reporting" in violation of section 52.021(b) or uses a "shorthand reporting" method for which he or she is not certified. On the other hand, we believe that a person who records such a deposition using a tape recorder as the primary or only method does not act as a certified shorthand reporter. Therefore, the recording of a deposition upon oral examination using a tape recorder as the primary or only method would run afoul of section 52.021(f), which provides that all such depositions conducted

¹The 73d Legislature amended section 20.001(a) of the Civil Practice and Remedies Code to include the following italicized language: "A deposition *on written questions* of a witness who is alleged to reside or to be in this state may be taken by" See Acts 1993, 73d Leg., ch. 1037, § 4.

²To the extent any local rule approved by the supreme court permits the taking of a deposition by anyone other than a certified shorthand reporter, we believe the prohibition set forth in subsection (f) would prevail. Cf. Gov't Code § 74.024(d) (stating that any administrative rules adopted by the supreme court remain in effect unless and until disapproved by the legislature).

You have not asked about, and we do not consider, the relationship between section 52.021(f) and rule 202 of the Texas Rules of Civil Procedure, which appears to authorize a court to order the recording of a deposition upon oral examination by videotaping and other non-stenographic methods.

in this state must be recorded by a certified shorthand reporter, unless its exceptions apply.³

Finally, you ask "may a professional association file a complaint against a [certified shorthand reporter] on behalf of its membership? May an individual wishing to remain anonymous file a complaint with the Board against a Texas [certified shorthand reporter]?" The first query does not specify whether you are interested in complaints filed in district court to enforce section 52.021, or complaints filed with the board to initiate disciplinary proceedings. Newly added subsection (g) of section 52.021 provides that "[t]he *board* may enforce this section by seeking an injunction or by filing a complaint against a person who is not certified by the supreme court in the district court of the county in which that person resides." Acts 1993, 73d Leg., ch. 1037, § 2 (emphasis added). This provision does not authorize any person, or any entity other than the board, to file a complaint against a certified shorthand reporter in district court.

Section 52.027 sets forth the method for filing a complaint against a certified shorthand reporter with the board to initiate disciplinary proceedings. It provides as follows:

(a) To file a complaint against a certified shorthand reporter, a *person* must:

- (1) complete a complaint form provided by the board;
- (2) sign the completed form under oath; and
- (3) attach any pertinent documentary evidence to the form.

(b) On receipt of a properly executed complaint, the board shall furnish a copy of the complaint and any attachments to the certified shorthand reporter who is the subject of the complaint.

Gov't Code § 52.027 (emphasis added). The Code Construction Act defines the term "person" to include a "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." *Id.* § 311.005(2). Therefore, we believe that section 52.027 authorizes a professional association to file a complaint, provided that an authorized agent completes the complaint form and signs it under oath on behalf of the professional association. Because it requires

³We note that you ask us to consider this issue in light of subsection (d) of section 52.021, which provides that a person certified under chapter 52 before September 1, 1983, may retain a general certification authorizing him or her to use any authorized method of shorthand reporting on the condition that he or she keep the certification in continuous effect. Given our conclusion that a certified shorthand reporter who uses a tape recorder as the primary or only method does not engage in shorthand reporting, we do not believe it is necessary for us to consider this provision.

that a complaint must be signed and provides that the subject of the complaint is entitled to a copy, section 52.027 clearly does not permit a complaint to be filed anonymously.

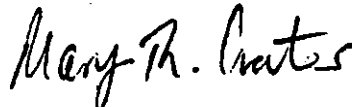
S U M M A R Y

Subsections (e) and (f) of section 52.021 of the Government Code, as amended by House Bill 2037, Acts 1993, 73d Leg., ch. 1037, § 2, do not conflict.

A person who records a deposition upon oral examination using a tape recorder as the primary or only method does not engage in "shorthand reporting" in violation of section 52.021(b) or use a "shorthand reporting method" for which he or she is not certified. The recording of such a deposition using a tape recorder as the primary or only method, however, would run afoul of section 52.021(f), which provides that all such depositions must be recorded by a certified shorthand reporter, unless its exceptions apply.

Subsection (g) of section 52.021, as amended by House Bill 2073, does not authorize any person, or any entity other than the Court Reporters Certification Board, to file a complaint against a certified shorthand reporter in district court. Section 52.027 of the Government Code does not authorize the filing of a complaint with the board by an anonymous individual; it does authorize the filing of a complaint by a professional association, provided that an authorized agent completes the complaint form and signs it under oath on behalf of the professional association.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee